

Appl. No. 10/736,282
Docket No. AA556C
Amdt. dated October 27, 2006
Reply to Office Action mailed on July 27, 2006
Customer No. 27752

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REMARKS

During Applicant's telephone conversation with the Examiner on October 27, 2006, the Examiner pointed out that the Office Action dated July 27, 2006 was not a final Office Action as stated on page 7, line 2 of the Office Action. Therefore, Applicant will respond accordingly.

Claim Status

Claims 1-18 are pending in the present application. No additional claims fee is believed to be due.

Rejection Under 35 USC §102(b) Over Buell

Claims 1-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Buell, *et al.*, (U.S. Patent No. 5,221,274). Applicant respectfully traverses the rejection.

The Office Action states

the discontinuities taught by Buell are pleats, which are opened when tensile forces are applied. Such discontinuities are formed when the chassis outer layer taught by Buell is bonded to the elastic waistband and inner layers in a tensioned state and permitted to relax. Thus the pleats are formed from portions of the inner layers of said diaper and thus the pleats or discontinuities, extend through the chassis layer.

It is well settled that a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Buell does not teach each and every element of claim 1 of the present application. Specifically, Buell does not teach that the elastomeric members provide an extensibility controlling means, as is recited in claim 1 of the present application.

It is Applicant's position that Buell does not teach openings that extend through the chassis layer. Therefore, Buell does not teach an absorbent article having a pair of longitudinal side edges and a first end edge, a second end edge, a first waist panel adjacent to the first end edge, a second waist panel adjacent to the second end edge, a crotch panel positioned between the first and second waist panels, and a side panel

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extending laterally outwardly from the first or second waist panel, the absorbent article comprising a liquid pervious topsheet, an absorbent core disposed underneath the topsheet, and a chassis layer, wherein the first or second waist panel comprises a portion of the chassis layer, the chassis layer including a plurality of spaced discontinuities regularly disposed in at least a portion of the first or second waist panel such that when the waist panel is subject to tension the discontinuities provide openings that extend through the chassis layer thereby providing the chassis layer with extensibility in the transverse direction; and an extensibility controlling means to control the extensibility of the chassis layer, wherein the extensibility controlling means inhibits the chassis layer from extending beyond extensibility causing breakage of the chassis layer.

As a result, Applicant asserts that Buell does not teach each and every element of claim 1 or its respective dependent claims. Accordingly, Applicants respectfully request that the rejection of claims 1 – 10 under 35 U.S.C. 102(b) over Buell be reconsidered and withdrawn.

Rejection Under 35 USC §103(a) Over Buell et al. in view of Nakahata et al.

Claims 11 – 12 and 16 – 18 have been rejected under 35 USC §103(a) as being unpatentable over Buell in view of Nakahata (U.S. Pat. No. 6,262,231, hereafter Nakahata). Applicant respectfully traverses the rejection.

As pointed out above, Buell does not disclose openings that extend through the chassis layer, as is recited in claim 1 of the present application. Therefore, Applicant submits that Buell does not teach or suggest each and every element of claim 1 or its respective dependent claims, as they are recited in the present application.

The Office Action looks to Nakahata to provide the missing disclosure of Buell. Nakahata discloses an absorbent article having a topsheet that includes selectively openable and closeable openings in order to isolate fecal matter from the body of a wearer. However, it is Applicants understanding that Nakahata does not teach or suggest openings that extend through the chassis layer thereby providing the chassis layer with extensibility, as is recited in claim 1 of the present application. Therefore, it is Applicant's position that Nakahata does not provide the missing disclosure of Buell, and

OCT-27-2006 13:00

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consequently that the combination of Buell and Nakahata do not teach or suggest each and every element of claims 11 – 12 and 16 – 18.

Accordingly, Applicant respectfully requests that the rejection of claims 11 – 12 and 16 – 18 under 35 U.S.C. §103(a) over Buell in view of Nakahata be reconsidered and withdrawn.

Conclusion

This amendment represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the applied references. Applicant respectfully requests that the rejection of the claims be reconsidered in light of the claim amendments and arguments set forth herein and that claims 1 – 18 be allowed. Early and favorable action in the case is respectfully requested.

Respectfully submitted,

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Date: October 27, 2006
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(Amendment-Response to Office Action.doc)
Revised 04/25/2006